

FINANCIAL IMPACT OF QUESTION 2

FINANCIAL IMPACT – CANNOT BE DETERMINED

OVERVIEW

Question 2 proposes to amend the *Nevada Revised Statutes* to add several new sections that would require the Department of Taxation to regulate and administer the operation of facilities that cultivate, produce, and dispense marijuana products in the state. Question 2 additionally requires the Department to collect a 15 percent excise tax upon the wholesale value of marijuana sold by a marijuana cultivation facility in Nevada. The proceeds from the excise tax, less costs incurred by the Department of Taxation and counties, cities, and towns to carry out certain provisions of Question 2, must be deposited in the State Distributive School Account.

Question 2 also decriminalizes the personal use, possession, or cultivation of marijuana under certain circumstances and provides for criminal penalties related to the unlawful cultivation, consumption, manufacture, or distribution of marijuana.

FINANCIAL IMPACT OF QUESTION 2

State and local governments will receive additional revenue from the following provisions of Question 2:

1. The Department of Taxation shall collect a one-time fee of \$5,000 from each applicant for a marijuana establishment license.
2. The Department of Taxation may impose fees for the initial issuance and annual renewal of marijuana establishment licenses for retail stores, cultivation facilities, product manufacturing facilities, distributors, and testing facilities, with the maximum fee that can be imposed for each license specified in Question 2.
3. An excise tax of 15 percent must be collected on the fair market wholesale value of marijuana sold by a marijuana cultivation facility and remitted to the Department of Taxation. The Department must establish regulations to determine the fair market wholesale value for marijuana in the state.
4. Marijuana, marijuana products, and marijuana paraphernalia sold as tangible personal property by a retail marijuana store would be subject to state and local sales and use taxes under current statute.

The proceeds from the application fee, license fees, and excise tax, less costs incurred by the Department of Taxation and counties, cities, and towns to carry out certain provisions of Question 2, must be deposited in the State Distributive School Account. The proceeds from the state and local sales and use taxes generated on the retail sales of marijuana, marijuana products, and marijuana paraphernalia would be distributed to the state and local governments, including school districts, in the same manner these taxes are currently distributed.

The Department of Taxation and the Fiscal Analysis Division cannot determine the amount of revenue that will be generated for state and local governments, including school districts and the State Distributive School Account, from the application fee, licensee fees, excise tax, and sales and

use taxes, because the following factors cannot be estimated with any reasonable degree of certainty:

1. The number of applications that would be received by the Department for marijuana establishment licenses;
2. The number of initial and annual licenses that would be issued by the Department and the amount of the fee that the Department would charge for each initial and annual license issued, if the Department decides to impose the license fees authorized within Question 2;
3. The quantity of marijuana that will be sold by marijuana cultivation facilities and the fair market value that will be established by the Department through the regulatory process that will be subject to the excise tax;
4. The quantity of marijuana, marijuana products, and marijuana paraphernalia and the price of these items that will be sold by retail marijuana stores that will be subject to state and local sales and use taxes.

Additionally, businesses that receive marijuana establishment licenses from the Department may also be subject to additional taxes and fees imposed by the state of Nevada or by local governments, including, but not limited to, the Modified Business Tax, the Commerce Tax, and state and local business license fees, which would increase revenues from these tax sources dedicated to the state or local government entity imposing the tax or fee. However, because the Fiscal Analysis Division cannot estimate the number of licenses that will be issued, the revenue that may be generated by the marijuana establishments, or the wages that may be paid to persons employed by the establishments, the resultant increase in revenues dedicated to the state and local governments cannot be determined with any reasonable degree of certainty.

The Fiscal Analysis Division has identified the following areas that may affect expenditures for state and local governments as a result of Question 2:

1. The Department of Taxation has indicated that it will incur one-time costs for equipment and programming of its computer system totaling approximately \$600,000. The Department has also indicated that it will need an additional 14 positions to implement and administer these provisions, beginning on January 1, 2017, which, along with associated operating costs, would result in a cost of approximately \$637,000 for the last six months of Fiscal Year 2017 (January 1, 2017–June 30, 2017) and approximately \$1.1 million in each subsequent fiscal year. The Department has estimated that the total costs for implementation and administration of Question 2 would be approximately \$1.2 million in Fiscal Year 2017 (the first year in which the provisions would become effective), and approximately \$1.1 million per fiscal year thereafter.

The Department has indicated that some expenditures will be required before revenue from the excise tax and fees authorized in Question 2 are collected; however, the Fiscal Analysis Division cannot determine how the Department will choose to implement Question 2, the timing of expenditures that will be incurred by the Department, or the method that will be used to fund these initial costs.

2. Question 2 requires the Department of Taxation to conduct a background check of each prospective owner, officer, and board member of a marijuana establishment license

applicant. Question 2 also requires the operator of each marijuana establishment to determine the criminal history of each worker or volunteer for suitability of employment as established in Question 2. The Department of Public Safety has indicated that if it will be required to process the background checks, the caseload increase will require one to two additional positions, which would cost approximately \$50,000 to \$100,000 per fiscal year. However, the Fiscal Analysis Division cannot determine the process that the Department of Taxation will choose to conduct these background checks.

3. The provisions of Question 2 that criminalize and decriminalize certain actions related to marijuana will require changes to the Nevada Offense Codes used in the Central Repository for Nevada Records of Criminal History maintained by the Department of Public Safety. The Department of Public Safety has indicated that an independent contractor may be required to implement the changes to the Nevada Offense Codes, which would result in a financial impact of approximately \$10,000 to \$40,000, based on previous contracts for these types of services. The Fiscal Analysis Division has determined that a financial impact on state government may occur only if an independent contractor is used to make the changes to the Nevada Offense Codes.
4. The provisions of Question 2 that criminalize and decriminalize certain actions related to marijuana may increase or decrease the workload of various state and local government agencies with respect to enforcement, investigation, incarceration, probation, and parole. The Fiscal Analysis Division cannot determine the net effect of these provisions on the workload of these agencies with respect to these functions.

The Fiscal Analysis Division cannot determine what actions may be taken by state and local governments to carry out the provisions of Question 2, the amount of expenditures that may be incurred, or how those expenditures would be funded. However, Question 2 specifies that excise tax revenues, fees, or penalties collected must first be used to defray certain costs incurred by the Department of Taxation and counties, cities, and towns, with the excess revenue to be deposited in the State Distributive School Account. Additionally, state and local governments, including school districts, will receive sales and use tax revenue from the retail sales of marijuana, marijuana products, and marijuana paraphernalia, as well as from other taxes and fees that may be paid by businesses that receive marijuana establishment licenses. Therefore, the Fiscal Analysis Division cannot determine the financial impact upon state or local governments, including school districts and the State Distributive Account, because the revenues and expenditures resulting from Question 2 cannot be estimated with any reasonable degree of certainty.

Prepared by the Fiscal Analysis Division of the Legislative Counsel Bureau – August 12, 2016